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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT TACOMA

11 THURMAN SHERRILL,

12 Petitioner,

13 v.

14 PATRICK GLEBE,

15 Respondent.
16

CASE NO. C09-5566RJB

REPORT AND
RECOMMENDATION

Noted for October 16, 2009

17 This case has been referred to the undersigned magistrate judge pursuant to 28 U.S.C. §
18 636(b)(1) and Local MJR 3 and 4. Petitioner in this case is an inmate at the Stafford Creek
19 Correction Center, Washington. Petitioner has filed an application to proceed in forma pauperis.
20 (Doc. 1) However, because petitioner has paid the \$5.00 filing fee, the Court should deny the
21 application.
22

23 **DISCUSSION**

24 The district court may permit indigent litigants to proceed in forma pauperis upon
25 completion of a proper affidavit of indigency. See 28 U.S.C. § 1915(a). The court has broad
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1 discretion in denying an application to proceed in forma pauperis. Weller v. Dickson, 314 F.2d
2 598 (9th Cir. 1963), *cert. denied*, 375 U.S. 845 (1963).

3 Several district courts have ruled that denial of in forma pauperis status is not
4 unreasonable when a prisoner is able to pay the initial expenses required to commence a lawsuit.
5 See Temple v. Ellerthorpe, 586 F.Supp. 848 (D.R.I. 1984); Braden v. Estelle, 428 F.Supp. 595
6 (S.D.Tex. 1977); U.S. ex rel. Irons v. Com. of Pa., 407 F.Supp. 746 (M.D.Pa. 1976); Shimabuku
7 v. Britton, 357 F.Supp. 825 (D.Kan. 1973), *aff'd*, 503 F.2d 38 (10th Cir. 1974); Ward v. Werner,
8 61 F.R.D. 639 (M.D.Pa. 1974).

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10 By requesting the court to proceed in forma pauperis in the present case, petitioner is
11 asking the government to incur the filing fee because he is allegedly unable to afford the costs
12 necessary to proceed with his petition for habeas corpus. In contrast to the claim that petitioner
13 cannot afford the filing fee, on September 15, 2009, the court clerk received the required fee
14 from petitioner and issued petitioner a receipt. Given the minimal fees required to proceed with
15 this action (\$5.00 filing fee) and the fact that petitioner paid the filing fee, it is reasonable to deny
16 petitioner's application for in forma pauperis status.
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18 CONCLUSION

19 Because it is reasonable to expect petitioner, given his financial status, to incur the costs
20 to proceed with his petition, I recommend that the Court deny his pending applications for in
21 forma pauperis status.
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23 Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil
24 Procedure, the parties shall have ten (10) days from service of this Report to file written
25 objections. See also Fed.R.Civ.P. 6. Failure to file objections will result in a waiver of those
26 objections for purposes of appeal. Thomas v. Arn, 474 U.S. 140 (1985). Accommodating the

1 time limit imposed by Rule 72(b), the clerk is directed to set the matter for consideration on
2 October 16, 2009, as noted in the caption.

3 Dated this 21st day of September, 2009.
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7 J. Richard Creatura
8 United States Magistrate Judge
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